Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1979

No. 79-1981

CARL and MARIE ARRIGALE,

Petitioners,

vs.

INTERNATIONAL FIDELITY INSURANCE COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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In The

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No.

CARL AND MARIE ARRIGALE,

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vs.

INTERNATIONAL FIDELITY INSURANCE COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Stuart A. Eisenberg, attorney for petitioners, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above case on March 18, 1980.

OPINIONS BELOW

Copies of the opinions of the District Court for the Eastern District of Pennsylvania dated the 9th day of July 1979 and the 6th day of September 1979 are appended to this petition in the appendix at pp. 1a-2a. Copies of the opinions of the Court of Appeals for the Third Circuit are appended to this petition in the appendix at pp. 3a-5a.

JURISDICTION

The judgment of the Court of Appeals for the Third Circuit was made and entered on the 25th day of February 1980, and petitioners' petition for rehearing was denied on March 18, 1980, and copies thereof are appended to this petition in the appendix at pp. 3a-5a. The jurisdiction of this Court is invoked resulting from the final order of the Court of Appeals for the Third Circuit.

QUESTIONS PRESENTED

Petitioners suffered a judgment in the Federal District Court for the Eastern District of Pennsylvania for failure to file an answer to the complaint in assumpsit filed against them. In the midst of settlement discussions, which included discovery pursuant to the merits of the matter, petitioners filed a petition to open judgment alleging a meritorious defense, a timely filing to open judgment and a reasonable excuse for the failure to file an answer within the time prescribed by the Federal Rules of Civil Procedure.

The district court denied petitioners' motion to set aside default judgment on the sole ground that petitioners' motion was filed eight months after the judgment, which is factually incorrect, and on the eve of execution, which is factually incorrect. The district court failed to consider whether the granting of the motion would work prejudice to the plaintiff-respondent and whether a meritorious defense had been presented, as required by the case law established by the Third Circuit, in *Medunic v. Lederer,* 533 F.2d 891 (3d Cir. 1977).

The Third Circuit, in its response to the initial appeal and prayer for rehearing, summarily dismissed petitioners' prayers without discussion.

The questions presented are:

1. Whether the court failed to consider questions as required by the law of the Third Circuit as to whether granting of the motion to set aside judgment would work prejudice to the respondent and whether a meritorious defense had been presented in support of petitioners' position.

2. Whether the court erred in issuing its decision on the sole ground that the motion was not timely filed, with the court citing facts which were clearly erroneous in the determination of timeliness.

3. Whether it was error for the court to assess the meritorious defense and reasonable excuse for failure to file a timely answer to the complaint without explanation and discussion of these aspects.

4. Whether the court ignored improperly and in error its own established requirement that there is an abuse of discretion if the district court fails to consider questions as to the prejudice to respondent if a default judgment is opened and the existence of a meritorious defense by petitioners, or the timeliness of the filing with an excuse within the context of reasonableness.

5. Whether the Court of Appeals abused its discretion by failing to adhere to its own established "standard of liberality" in such motions as the instant motion, and to resolve any doubts in favor of the petitioners.

6. Whether the Court of Appeals failed to adhere to the standards of law established by it to guide itself and the attorneys admitted to practice before it and the district court within the Third Circuit.

STATEMENT

Petitioner Carl Arrigale, was an indemnitor pursuant to a Completion Bond as allegedly was Marie Arrigale. It is averred that the signature of Marie Arrigale is a forgery. Carl Arrigale became disabled with a heart and circulatory condition and ceased performing work on behalf of his one-man company, Arrigale Electrical Contractors. Accordingly, the bonding company, respondent hereto, paid out certain sums to various parties, the amounts of which and to whom, were never revealed to petitioners by respondent, despite numerous requests therefor. The respondent was then allegedly reimbursed by the Small Business Administration under an agreement to which petitioners were not signatories nor of which petitioners were never aware of its existence. This latter agreement supposedly provides that the bonding company, respondent hereto, shall pursue collection for and on behalf of the Small Business Administration to achieve a reimbursement to the latter. This agreement between the S.B.A. and the Bonding Company was alleged to be the basis for the action against your petitioners by the party that was already made whole — respondent.

Shortly after the filing of the action by respondent, petitioner Carl Arrigale suffered a severe and disabling heart attack. As he, not Marie Arrigale, his wife, operated the business, she was not apprised or aware of the possible or actual actions against the business. Because of his illness and the severity thereof, no answer was filed. Within the time permitted by law, a default judgment was filed in the amount of approximately $170,000 against petitioners.

Once Carl Arrigale sufficiently recovered, he retained current counsel who initiated discussions with the respondent pursuant to settlement and discovery of the facts involved with the assertion of the meritorious defense by Marie Arrigale; that is, the forgery of her name on the indemnification agreement which was the document purported to support the action against

the petitioners. In the midst of the discovery and settlement discussions, and within six months of the filing of the default judgment, a petition to set aside judgment was filed. The petition was denied, with the federal district court judge stating that the petition was filed on the "eve of execution", which it was not, and after "eight months" of the filing of the default judgment, which is a blatant misstatement of fact. The Court of Appeals for the Third Circuit upheld the decision without comment. Neither court commented on the aspects of meritorious defense, prejudice to respondent should the judgment be set aside, or the mistakes of fact as asserted by the district court. These decisions are alleged and asserted to be basic error, and outside of the scope of parameters established by the court for such matters.

The jurisdiction of the federal court in this matter is alleged to have been in accordance with 28 U.S.C. §1332, in that the parties are citizens of different states and the amount in controversy exceeds $10,000.

REASONS FOR GRANTING THE WRIT

The decision below should be reviewed by this Honorable Court because it erroneously contradicts the statement of law as propounded by the Third Circuit and this Honorable Court pertaining to abuse of discretion and the parameters established to guide parties in their respective filings.

The decisions at the lower courts overtly fail to conform to the requirements of *Medunic v. Lederer, supra* and *Tozer v. Charles A. Krause Milling Co.*, 189 F.2d 242 (3rd Cir. 1951) and Federal Rule of Civil Procedure 60(b). Although abuse of discretion is, itself, discretionary, the appropriate court of appeals has set forth specific parameters to eliminate consideration of abuse of discretion. However, when that circuit fails to adhere to its own requirements by failing to consider those elements which it deems necessary, or fails to require that the federal district court under the former's jurisdiction fails to

require adherence, then there is an abuse of discretion. Thus, by failing to consider the meritorious defense, the reasonableness of the excuse for failure to more timely file, the failure to adhere to the standards of liberality correlated with the boundaries as permitted by F.R.C.P. 60(b), the lower courts have abused discretion, and, if the meritorious defense is determined as truth, the decisions of these lower courts have irreparably injured an innocent person, Marie Arrigale, whose name has been asserted as forged on the document which is the subject of the initial action in this matter. Therefore, when, in *Tozer v. Krause, supra* and *Medunic v. Lederer, supra,* the court tells its constituency to follow certain rules, and then the court does not follow those rules, a chaotic disruption of administration of law occurs, and as in the instant situation, innocent people are compelled to suffer losses unjustifiably.

It is respectfully submitted that the essence of judicial administration is precedence and conformity to the laws and rules and regulations of the system. Such precedence and conformity were lacking in this matter, by virtue of the failure of the lower courts to adhere to their own prescriptions and proscriptions.

The petitioners presented a meritorious claim — forgery, an excuse for the failure to file within twenty days of service (heart attack and hospitalization); a filing within one year (it was made within six months), and a statement of facts by the district court judge which were clearly and unmistakenly wrong. It is respectfully submitted that all of the aforementioned clearly represent abuse of discretion and failure to adhere to the rules of court.

The questions presented by this matter are no less significant than the reasons for which the Third Circuit ruled in *Medunic v. Lederer;* no less significant than the reasons propounded by the court to protect the rights of any person who believes that that person can refer to the rules of court, the rules

of law and be guided thereby, only to find out that, in the instant situation, the said rules are not applicable to that person, without explanation therefor.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for writ of certiorari should be granted.

Respectfully submitted,

STUART A. EISENBERG
Attorney for Petitioners

APPENDIX A — ORDER FILED JULY 13, 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NO. 78-2479

INTERNATIONAL FIDELITY INSURANCE CO.

v.

CARL and MARIE ARRIGALE and ARRIGAL ELECTRIC CONTRACTORS INC.

AND NOW, TO WIT, this 9th day of July, 1979, IT IS ORDERED that the petition of defendants Carl and Marie Arrigale to set aside default judgment and request for a restraining order are hereby *denied*, on the ground that the motions are not timely filed as required under Fed.R.Civ.P. 60(b), having been filed on the eve of execution without a suitable explanation for an eight-month delay from the entry of the default. *See Central Operating Co. v. Utility Workers of America*, 491 F.2d 245, 252-253 (4th Cir. 1974).

s/ Louis C. Bechtle
LOUIS C. BECHTLE, J.

APPENDIX B — ORDER FILED SEPTEMBER 19, 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NO. 78-2479

INTERNATIONAL FIDELITY INSURANCE CO.

v.

CARL and MARIE ARRIGALE and ARRIGALE ELECTRIC CONTRACTORS, INC.

AND NOW, TO WIT, this 6th day of September, 1979, IT IS ORDERED that the petition of defendants Carl and Marie Arrigale for reconsideration for relief from default judgment and request for an order staying execution are hereby *denied with prejudice*, on the ground that the motions have been filed on the eve of execution and still without a suitable explanation for an eight-month delay from the entry of the default. *See Central Operating Co. v. Utility Workers of America*, 491 F. 2d 245, 252-253 (4th Cir. 1974).

s/ Louis C. Bechtle
LOUIS C. BECHTLE, J.

ENTERED: 9/10/79
CLERK OF COURT

APPENDIX C — JUDGMENT AND ORDER OF UNITED STATES COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

NOS. 79-2144 and 79-2370

INTERNATIONAL FIDELITY INSURANCE CO.

v.

ARRIGALE, CARL and MARIE ARRIGALE ELECTRICAL CONTRACTORS, INC.,

Carl Arrigale and Marie Arrigale,
his wife, Appellants

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

D.C. Civil No. 78-2479

Submitted Under Rule 12(6) February 22, 1980

Before: ROSENN and HIGGINBOTHAM, *Circuit Judges*, and LAYTON, *District Judge**

After consideration of all contentions raised by appellant, it is

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* Honorable Caleb R. Layton, 3rd, Senior United States District Judge for the District of Delaware, sitting by designation.

Appendix C

ADJUDGED and ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,

s/ Max Rosenn
Circuit Judge

Attest:

s/ Thomas F. Quinn
Thomas F. Quinn, Clerk

DATED: FEB 25 1980

APPENDIX D — SUR PETITION FOR REHEARING

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 79-2144 and 79-2370

INTERNATIONAL FIDELITY INSURANCE CO.

v.

ARRIGALE, CARL and MARIE ARRIGALE ELECTRICAL CONTRACTORS, INC.

Carl and Marie Arrigale, Appellants

Present: SEITZ, *Chief Judge*, ALDISERT, ADAMS, GIBBONS, ROSENN, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, *Circuit Judges*, and LAYTON, *District Judge**

The petition for rehearing filed by appellants in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

s/ Max Rosenn
Judge

Dated: March 18, 1980

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* Sitting by designation.